



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

JAMES S. REINHARD, M.D.  
COMMISSIONER

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September 1, 2005

Mr. Jason Cenicola  
Senior Corporate Counsel  
Kronos Incorporated  
297 Billerica Road  
Chelmsford, MA 01824

Dear Mr. Cenicola:

Re: Agreement #720C-03833-04M00

The above referenced contract provides for five (5) additional renewals of one-year duration. The Department wishes to confirm the renewal of the above referenced contract for a period of one (1) year. The renewal period would commence upon final execution and continue through June 30, 2006, to include services beginning July 1, 2005. This renewal would be based on all terms and conditions of the original Agreement dated June 29, 2004, and shall incorporate the following modifications.

**Number 2.13 of the original contract is hereby changed and shall read as follows:**

- 2.13 Agree any system be accessible and usable through a common commercially available database to include but is not limited to Microsoft Access, Sequel or Excel.

**Number 2.19 of the original contract is hereby changed and shall read as follows:**

- 2.19 Provide badge terminals that have both visual and audio feedback signifying a successful or unsuccessful badging process. Terminals shall also allow employees to view current and future schedules, total hours worked, review previous punches, employee status, and individual employee messaging.

**Number 2.32.2 of the original contract is hereby changed and shall read as follows:**

- 2.32.2 Agree all Time and Attendance software is able to run in a Win 95/2000/Win NT environment on a network and server.

**Number 2.32.5 of the original contract is hereby changed and shall read as follows:**

- 2.32.5 Provide Time and Attendance software that maintains an audit trail that consists of all transactions within Timecard, Leave and Attendance. Audit trail will display date time and password and is capable of providing printable reports in time and data sequence.

**Number 2.32.46 of the original contract is hereby changed and shall read as follows:**

- 2.32.46 Utilizes error file that records all operations and errors that occur within the system which is easily accessible and has comprehensive context sensitive on-line help.

**Number 2.32.48 of the original contract is hereby changed and shall read as follows:**

- 2.32.48 FMLA software assists organizations with compliance with the Family Medical Leave Act of 1993 (FMLA), in addition will track number of hours an employee has taken under FMLA.

**Number 3.3 of the original contract is hereby changed and shall read as follows:**

- 3.3 Pricing for all hardware/software and all hardware/software support services purchased under this contract and any subsequent renewal period shall be GSA like pricing fixed for a period one (1) year. Pricing discount shall be thirty (30%) percent off most current published list price (July 1, 2005,) as provided by Contractor. Prices for training and other implementation-related services will be obtained based on best of case scenario upon evaluation of individual agency resources and infrastructure.

**Number 3.5 of the original contract is hereby changed and shall read as follows:**

- 3.5 The Contractor agrees to honor any and all pricing under this agreement for maintenance to any DMHMRSAS facility currently having a KRONOS Time and Attendance system. This shall include renewal of any maintenance agreements currently held at DMHMRSAS facilities which may terminate or become renewable during the term of this contract. Maintenance pricing for subsequent renewal periods shall not exceed the contract price(s) of the previous contract increased/decreased by no more than the percentage increase/decrease of the "Other Services" category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve (12) months for which statistics are available at the time of each renewal. The Contractor agrees that any DMHMRSAS facility maintenance pricing that has been increased by the above CPI on Kronos hardware/software/licenses currently owned by any DMHMRSAS facility and that was purchased directly through Contractor and covered under an existing maintenance agreement shall not exceed the Contractor's current published maintenance pricing. Support service options are set forth in Appendix A, attached hereto and incorporated by reference herein.

In addition, the Contracting Agency has approved the Contractor's request for increase of maintenance/support rates at time of renewal at each DMHMRSAS facility contracted with Kronos for maintenance. Maintenance contract price for the additional one year period shall not exceed the contract price(s) of the previous contract period at each facility increased/decreased by no more than the percentage increase/decrease of the "Other Services" category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve (12) months for which statistics are available at the time of each renewal.

**Number 4.2 shall be added to the contract and shall read as follows:**

- 4.2 All software provided by the Contractor to a Contracting/Purchasing Agency shall be subject to the software license terms set forth in Appendix B, attached hereto and incorporated by reference herein.

Number 6.9 of the original contract is hereby changed and shall read as follows:

- 6.9 **PRECEDENCE OF TERMS:** Paragraphs 6.1 – 6.8 of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

Number 7.30 of the original contract is hereby changed and shall read as follows:

- 7.30 **SERVICE PERIOD (ROUTINE):** Subject to the Support Service Option selected by the DMHMRSAS facility, Contractor shall provide 24 hour toll free phone support with a eight hour or less return call response time. On-site maintenance services shall carry a eight hour or less hour response time following initial notification and be available during the normal working hours of 8 A.M. to 5 P.M. Monday through Friday, excluding state holidays. All necessary repairs or corrections for Kronos Equipment shall be completed within twenty-four hours or less of the initial notification.

Number 7.32 of the original contract is hereby changed and shall read as follows:

- 7.32 **SOFTWARE UPGRADES:** Provided the Commonwealth is an active Kronos maintenance customer shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.

Number 7.34 of the original contract is hereby changed and shall read as follows:

- 7.34 **TERM OF SOFTWARE LICENSE:** Unless otherwise stated in the contract, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Commonwealth reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any compatible equipment, by the number of users licensed by the Commonwealth, and for the purposes for which it is procured. The Commonwealth further reserves the right to transfer all rights under the license to another state agency to which some or all of its functions are transferred.

Number 7.38 of the original contract is hereby changed and shall read as follows:

- 7.38 **WARRANTY OF SOFTWARE:** The contractor warrants that the software shall substantially operate in accordance with the Kronos published specifications for so long as the Commonwealth maintains the software under a support plan with Kronos. During the warranty period, the contractor shall provide toll free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation within the service coverage period of the support service option selected by the DMHMRSAS facility. In addition, the contractor shall provide a return call response time in accordance with the below Support Services Policies.

## Support Services Policies

### Kronos response time

Kronos utilizes a priority based support focus. Customers with the most critical request will be serviced in accordance with the following guidelines:

**Priority High:** a critical Customer problem such as the Software is "down" and Customer cannot utilize the Software will have a response time of two business hours or less.

**Priority Medium:** a serious Customer problem, which impacts Customer's ability to utilize the Software effectively will have a response time of four business hours or less.

**Priority Low:** a non-critical problem with an acceptable workaround will have a response time of one business day or less.

**Priority Low/RFE:** a Customer "request for enhancement" of the Software will have a response time of two business days or less.

Response time shall mean from the time a call is received by Kronos' Global Support Center until a Kronos service representative contacts the Customer to begin service. Kronos provides "bug fixes" for the then-current release and the immediately prior release of the Software only. Therefore, if Customer is not utilizing the then-current or the immediately prior release of the Software, resolution may require that Customer upgrade to the then-current release of the Software.

**\*\*Determination of the priority level of support necessary shall lie with Customer\*\***

### Service coverage period

**Silver Service:** 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding Kronos holidays, with direct telephone access to Kronos' technical support staff.

**Gold or Gold *Plus* Service:** 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding Kronos holidays, with direct telephone access to Kronos' technical support staff.

**Platinum or Platinum *Plus* Support:** 24 hours a day, seven days a week, 365 days a year, with direct telephone access to Kronos' technical support staff.

As an authorized official(s) of Kronos Incorporated, I herewith agree and accept the renewal of the above referenced contract in accordance with the terms and conditions herein and in full accordance with the original Agreement dated June 29, 2004.

**Kronos Incorporated**

By: Alyce Moore  
Signature

By: \_\_\_\_\_  
Print Name **Alyce Moore**  
**Vice President, General Counsel**

Title: \_\_\_\_\_

Date: 9/6/05

**Department of Mental Health, Mental Retardation**  
**And Substance Abuse Services**

By: Joy S. Lazarus  
Joy S. Lazarus  
Director – Office of Administrative Services

Date: 9/7/05

## Appendix A

### MAINTENANCE & SUPPORT

#### A. GENERAL

**1. Support Options:** The Commonwealth (hereinafter referred to as "Customer") may select from the following Software support purchase options: Silver, Gold (or Gold Plus), and Platinum (or Platinum Plus) support ("Service Type"), each providing different service coverage periods and/or service offerings, as specified herein ("Service Offerings") and in the Kronos Support Service Policies (see below). Customer must purchase the same Service Type for all of the Software specified on the Purchase Order (however, if Customer is purchasing support services for Visionware Software, Customer may only purchase Gold Service Type for the Visionware Software.) All services and Software upgrades, updates, and/or enhancements and legislative updates shall be provided via remote access. For support services for Equipment, Customer may select from the support options under Sections C or D below.

**2. Term of Software Support:** Support services shall commence on the delivery date for the Software and Equipment and shall continue for an initial term of one (1) year, unless otherwise documented in writing by both parties at the time of purchase.

**3. Responsibilities of Customer:** Customer agrees (a) to provide Kronos personnel with full, free and safe access to Software and Equipment for purposes of support, including use of data communication facilities, if required; (b) to maintain and operate the Software, Equipment and Spare Products (as defined below) in an environment and according to procedures which conform to Kronos' specifications; (c) not to allow support of the Software by anyone other than Kronos without prior written authorization from Kronos. (d) deinstall all failed Equipment and install all replacement Equipment in accordance with Kronos' published installation guidelines; and (e) ensure that the failed Equipment is returned to Kronos properly packaged.

**4. Kronos Support Service Policies:** Customer may access Kronos' then-current Software Support Policies (including detailed Service Descriptions) at:  
<http://www.kronos.com/Support/SupportServicesPolicies.htm> ("Support Policies").

#### B. SOFTWARE SUPPORT

##### **1. Service Offerings Provided for all Service Types (Silver, Gold, Gold Plus, Platinum or Platinum Plus):**

Upon purchase of any service type customer shall be entitled to receive:

**(a)** Service Packs, Point Releases and Major Releases (including legislative updates if available) for the Software for which Customer has purchased support (not including any Software for which Kronos charges a separate license fee), provided that Customer's operating system and equipment meet minimum system configuration requirements, as reasonably determined by Kronos. If Customer requests Kronos to install such Service Packs, Point Releases and/or Major Releases (including legislative updates, if available) or to provide retraining, Customer agrees to pay Kronos for such installation or retraining at Kronos' then-current time and materials rate.

**(b)** Unlimited telephone access to the Kronos Global Support Center for the logging of requests for service during the Service Coverage Period.

**(c)** Web-based support including access to Software documentation, live online help, FAQ's, access to Kronos knowledge base, Customer forums, e-case management and e-mail support. Such offerings are subject to modification by Kronos. Current offerings can be found at [www.kronos.com/customer](http://www.kronos.com/customer).

(d) Remote diagnostic technical assistance may be utilized to resolve Software functional problems and user problems during the service coverage period.

## **2. Service Offerings Additional to Those Specified Above, Provided by Service Type:**

(a) Gold and Platinum: Technical advisories, learning quick tips, brown bag seminars, technical insider tips, SHRM e-Learning, HR Payroll Answerforce and service case studies. Such offerings are subject to modification by Kronos without notice.

(b) Gold Plus: Customers purchasing Gold support service may purchase, for an additional fee, the Gold Plus services of a dedicated, but not exclusive, Kronos technical account manager ("Technical Account Manager") to provide on-going account management support to Customer. Customer shall designate up to one primary and one secondary backup technical contact ("Technical Contacts") to be the sole contacts with the Technical Account Manager. Customer is required to place primary Technical Contacts through Kronos certification support training for the Software covered under this Agreement at Customer's expense.

(c) Platinum: A one-day per year Optimization Assessment to be performed at the Customer location where the Software is installed. During the Optimization Assessment, a Kronos application consultant shall work with Customer to identify ways to help Customer increase functionality or maximize utilization of the Software in Customer's specific environment, provided Customer's annual Software support fee is at least \$5,000 per year. Customer must be utilizing the then-current version of the Software. Travel time and expenses are not included and shall be charged to Customer at Kronos' then-current rate. Platinum customers also receive a two-hour or less response time for all calls placed to Kronos Global Support, regardless of the Priority level.

(d) Platinum Plus: Customers purchasing Platinum support services may purchase, for an additional fee, the Platinum Plus services of a dedicated, but not exclusive, Kronos Technical Account Manager. Customer shall designate up to two primary and three secondary backup Technical Contacts to be the sole contacts with the Technical Account Manager. Upon request, Customer may designate additional and/or backup Technical Contacts. Customer is required to place all primary Technical Contacts through Kronos certification support training for the software covered under this Agreement at Customer's expense.

## **C. DEPOT EXCHANGE SUPPORT SERVICE**

**1. Depot Exchange Support.** Upon the failure of an installed item of Equipment, Customer shall notify Kronos' Global Support organization at 1-800-394-4357 of such failure. Global Support will provide remote fault isolation and attempt to resolve the problem. Those failures determined by Global Support to be Equipment related shall be dispatched to the Depot Repair Center by Global Support. Hours of operation for the Depot Repair Center are Monday through Friday 8:00 A.M. to 5:00 P.M. EST, excluding Kronos holidays. Kronos will provide a replacement for the failed Equipment on an "advanced exchange" basis, utilizing a carrier of Kronos' choice. Replacement Equipment will be shipped the same day, for next business day delivery to Customer, if such request is received prior to 3:30 P.M., EST. REPLACEMENT EQUIPMENT MAY BE NEW OR RECONDITIONED. Customer shall specify the address to which the Equipment is to be shipped, and any special shipping or insurance instructions. All shipments will include a Return Shipping Label designating Kronos Depot, 300 Billerica Road, Chelmsford, Massachusetts 01824, as the recipient. Customer agrees that it shall return failed Equipment promptly as the failures occur and that it shall not hold failed Equipment and send failed Equipment to Kronos in "batches" which shall result in a longer turnaround time and surcharge to Customer.

Customer, upon receipt of the replacement Equipment from Kronos, shall package the defective Equipment in the materials provided by Kronos, with the return label supplied and make every reasonable effort to return failed equipment to Kronos within ten (10) calendar days. All returned equipment shall become the property of Kronos.

2. **Delivery.** Title to and risk of loss for the Equipment shall pass to Customer upon delivery to Customer. All shipments to Kronos shall be made "freight prepaid" using the Return Shipping Label and shipping instructions as specified by Kronos. Kronos will select the carrier to be utilized under the program.

#### **D. DEPOT REPAIR SUPPORT SERVICE.**

1. **Depot Repair Support.** Customer may purchase and retain, at Customer's location and at Customer's sole risk and expense, a sufficient number of spare products ("Spare Products") to allow customer to replace failed Equipment at all Customer locations. Upon failure of installed Equipment, Customer shall install a Spare Product to replace the failed Equipment. In addition, during the hours of 8:00 a.m. to 5:00 p.m. E.S.T., Monday through Friday, exclusive of Kronos holidays, Customer shall call Kronos Global Support Organization at 1-800-394-4357 to notify them of such failure. Global Support will provide remote fault isolation and attempt to resolve the problem. Those failures determined by Global Support to be Equipment related shall be dispatched to the Depot Repair Center by Global Support. Customer shall be provided with a Return Authorization number for the failed Equipment. Customer shall also specify the address to which the repaired Equipment should be shipped, and any special shipping or insurance instructions. Customer shall then return, at its expense and its risk of loss or damage, the failed Equipment, with the required Return Authorization Number, to the Kronos Depot, 300 Billerica Road, Chelmsford, Massachusetts 01824. Customer shall make every reasonable effort to return the failed Equipment using the same packing materials in which the original Equipment was sent. Customer agrees that it shall return failed Equipment promptly as the failures occur and that it shall not hold failed Equipment and send failed Equipment to Kronos in "batches" which shall result in a longer turnaround time and surcharge to Customer.

Upon receipt of the failed Equipment, Kronos shall repair the failed Equipment and return it, within ten (10) business days after receipt, to Customer. Unless specified otherwise by Customer at the time of Customer's call for a Return Authorization Number, Kronos shall ship the repaired Equipment by regular surface transportation to the Customer's address specified on Customer's original Purchase Order.



## Appendix B

### GENERAL LICENSE TERMS

Kronos owns or has the right to license the Software. The Software and Software documentation are confidential and may not be disclosed to a third party without Kronos' written consent. The Software contains proprietary trade secret technology. Unauthorized use and copying of such Software is prohibited by law, including United States and foreign copyright law. The price Customer pays for a copy of the Software constitutes a license fee that entitles Customer to use the Software as set forth below. This license is subject to all of the terms of this Agreement, including those set forth below:

#### (a) FEE BASED LIMITATIONS

Customer recognizes and agrees that the license to use the Software is limited, based upon the amount of the license fee paid by Customer. Limitations, which are set forth on the Order Form, may include the number of employees, simultaneous or active users, Software product modules, Software features, computer model and serial number, and/or the number of terminals to which the Software is permitted to be connected. Customer agrees to: i) use the Software only for the number of employees, simultaneous or active users, computer model and serial number, and/or terminals permitted by the applicable license fee; ii) use only the product modules and/or features permitted by the applicable license fees; and iii) use the Software only in support of Customer's own business. Customer agrees not to increase the number of employees, simultaneous or active users, terminals, products modules, features, or to upgrade the model, as applicable, unless and until Customer pays the applicable fee for such increase/upgrade. Customer may not relicense or sublicense the Software to, or otherwise permit use of the Software (including timesharing or networking use) by any third party. Customer may not provide service bureau or other data processing services that make use of the Software without the express prior written consent of Kronos.

#### (b) OBJECT CODE ONLY

Customer may use the computer programs included in the Software (the "Programs") in object code form only, and shall not reverse compile, disassemble or otherwise convert the Programs into uncompiled or unassembled code.

#### (c) PERMITTED COPIES

Customer may copy the Programs as reasonably necessary to load and execute the Programs and for backup purposes only. All copies of the Programs or any part thereof, whether in printed or machine readable form and whether on storage media or otherwise, are subject to all the terms of this license, and all copies of the Programs or any part of the Programs shall include the copyright and proprietary rights notices contained in the Programs as delivered to the Customer.

#### (d) TRAINING MATERIALS

If Customer is licensing Training Materials and/or purchasing the Kronos Train-the-Trainer (KTTT) Program (the "Certification Program"), the following additional terms shall apply: "Training Materials" shall mean the instructor guide(s), student guide(s), job aids, recorded executable files, and/or tutorials developed by Kronos for one or more Kronos products. Kronos grants to Customer a non-exclusive, nontransferable license to use the Training Materials. Customer recognizes and agrees that: i) the Training Materials constitute confidential and proprietary information of Kronos; ii) the Training Materials are copyrighted by Kronos; iii) the license to use the Training Materials is limited, based upon the amount of the license fee paid by Customer; iv) Customer may not copy or reproduce the Training Materials in excess of the number of copies permitted by the applicable license fee; v) Customer may not transmit, distribute or disclose the Training Materials to any third party, unless agreed to in writing by Kronos; vi) Customer's license to use the Training Materials is granted solely for the purpose of permitting Customer to train Customer's employees and no other use of the Training Materials is permitted; and vii) Customer

may not edit, modify, revise, amend, change, alter, customize or vary the Training Materials in any manner without the written consent of Kronos. Certification under the Certification Program is valid for two (2) years after successful completion of the Certification Program, applies only to the point release of the Software for which the Certification Program is taken, and covers only the Customer employee who completes the Certification Program.

(d) Customer understands that any export of the Software or related documentation or information may require an export license and Customer assumes full responsibility for obtaining such license. Customer must obtain Kronos' prior written consent before exporting the Software.